

IN THE UTAH COURT OF APPEALS

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|-------------------------|---|---|-----------------|
| Byron C. Stoddard,      | ) | MEMORANDUM DECISION   |                 |
|                         | ) | (Not For Official Publication)                              |                 |
| Petitioner,             | ) |   |                 |
|                         | ) | Case No. 20100798-CA  |                 |
| v.                      | ) |   |                 |
|                         | ) | F I L E D   |                 |
| Department of Workforce | ) | (December 16, 2010)   |                 |
| Services,               | ) |   |                 |
|                         | ) | <table border="1"><tr><td>2010 UT App 365</td></tr></table> | 2010 UT App 365 |
| 2010 UT App 365         |   |   |                 |
| Respondent.             | ) |   |                 |

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Original Proceeding in this Court

Attorneys: Byron C. Stoddard, Roy, Petitioner Pro Se  
            Suzan Pixton, Salt Lake City, for Respondent

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Before Judges Thorne, Voros, and Christiansen.

PER CURIAM:

Byron C. Stoddard seeks review of the Workforce Appeal Board's (the Board) September 22, 2010 decision. This matter is before the court on a sua sponte motion for summary disposition. We affirm.

A claimant who has been denied unemployment benefits may file an appeal with the Division of Adjudication within ten days of the original determination. See Utah Code Ann. § 35A-4-406(3)(a). If the claimant does not file an appeal within the prescribed time, the claimant must demonstrate good cause for filing a late appeal. See Autoliv ASP, Inc. v. Workforce Appeals Bd., 2000 UT App 223, ¶ 12, 8 P.3d 1033. Untimely appeals to the Board are reviewed in the same manner as untimely appeals to the Administrative Law Judge (ALJ). See Utah Admin. Code R994-508-302(4).

Good cause is strictly limited to circumstances where: (1) the appellant received the decision after the expiration of time for filing the appeal, the appeal was filed within ten days of actual receipt of the decision and the delay was not the result of willful neglect; (2) the delay in filing the appeal was due to circumstances beyond the appellant's control; or (3) the appellant delayed filing the appeal for circumstances which were

compelling and reasonable. See Autoliv ASP, Inc., 2000 UT App 223, ¶ 12. If the appellant does not demonstrate good cause for the late filing, the ALJ does not have jurisdiction to consider the appeal. See id.

On October 15, 2009, the Department of Workforce Services (Department) determined that Stoddard was properly discharged from his employment. The October 15, 2009 decision stated that an appeal from the decision must be filed on or before November 2, 2009. The record indicates that Stoddard timely received the decision but he elected not to file an appeal until January 4, 2010. On January 27, 2010, the ALJ determined that Stoddard's appeal was untimely and that Stoddard failed to demonstrate good cause for filing an untimely appeal as required by Utah Code section 35A-4-406(3). See Utah Code Ann. § 35A-4-406(3). The ALJ's January 27, 2010 decision also stated that it would become a final decision unless Stoddard filed a written appeal to the Board within thirty days. See Utah Admin. Code R994-508-302(1).

The record indicates that Stoddard also failed to timely appeal the ALJ's January 27, 2010 decision. On July 19, 2010, the Board received Stoddard's appeal from the January 27, 2010 decision. Stoddard did not provide any information regarding why he did not timely file his appeal. The Board sent Stoddard a letter requesting information regarding the circumstances for his untimely appeal. Stoddard failed to address why his appeal was untimely. The Board determined that the ALJ's decision clearly outlined the appeals procedure and specified the deadline for filing an appeal. The Board also determined that before it could assume jurisdiction over the appeal, Stoddard must have demonstrated that the delay in filing his appeal was due to circumstances beyond his control. See Autoliv ASP, Inc., 2000 UT App 223, ¶ 12. Because Stoddard failed to provide any information addressing why he failed to timely file an appeal, the Board determined that Stoddard had failed to demonstrate that he was prevented from filing his appeal to the Board in a timely manner. The Board also determined that Stoddard failed to demonstrate that he delayed filing the appeal for circumstances which were compelling and reasonable. Thus, the untimely appeal deprived the agency of jurisdiction to consider his appeal. See id. ¶ 19.

This court will reverse an administrative agency's findings of fact "only if the findings are not supported by substantial evidence." Drake v. Industrial Comm'n, 939 P.2d 177, 181 (Utah 1997). We will not disturb the Board's conclusion regarding the application of law to facts unless it "exceeds the bounds of reasonableness and rationality." Nelson v. Department of Emp't Sec., 801 P.2d 158, 161 (Utah Ct. App. 1990). The record supports the Board's determination that Stoddard's untimely

appeal was not due to circumstances beyond his control, or that there was a compelling or reasonable explanation for his failure to timely file an appeal. Thus, the record supports the determination that Stoddard did not have good cause to excuse his untimely appeal.

Accordingly, the Board's September 22, 2010 decision is affirmed.

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William A. Thorne Jr., Judge

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J. Frederic Voros Jr., Judge

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Michele M. Christiansen, Judge